(19,144.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 493.

R. E. HODGE AND MRS. J. TABOR, PLAINTIFFS IN ERROR,

vs.

MUSCATINE COUNTY ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

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1 In the Supreme Court of Iowa, October Term, A. D. 1902.

R. E. HODGE and MRS. J. TABOR, Appellants,
vs.
MUSCATINE COUNTY ET AL., Appellees.

Appeal from Muscatine district court.

Hon. W. F. Brannan, judge.

Dunshee & Dorn, attorneys for appellants. J. Parker, of counsel. Ed. P. Ingham, county attorney, for appellees.

Appellants' Abstract of Record.

On the 15th day of November, 1900, appellants filed in the office of the clerk of the district court of Muscatine county, their

2 *Petition in Equity.*

The plaintiffs allege:

"1st. That plaintiff, Mrs. J. Tabor, is the owner in fee of the following real estate, situated in Muscatine, Muscatine county, Iowa, to-wit:

That on said real estate, which is in the business center of the city of Muscatine, is situated a house suitable and fit for the tobacconist business; that said plaintiff, R. E. Hodge, has rented and leased said real estate to plaintiff R. E. Hodge for the purpose of conducting and operating a tobacconist shop or store therein and thereon, and the said plaintiff has caused to be brought into said store, and has offered for sale at retail a stock of plug and smoking tobacco and cigars which have been bought by said R. E. Hodge from various dealers, and he has also brought into said store and offered for sale and sold cigarettes gotten and procured by him only in the manner and way set out in the next following section of the petition; that said R. E. Hodge has not sold, nor offered for sale, given away, nor offered to give away, bartered nor offered to barter any other tobaccos than those mentioned above, and especially has he not sold, nor offered for sale, given away, nor offered to give away, bartered, nor offered to barter, nor held himself out as offering to sell, give away, or barter any cigarette papers or wrappers, or papers intended to be filled with tobacco for smoking at all, nor cigarettes, except such as are ordered sold and shipped to said R. E. Hodge and sold by him as set out in the next following section hereof; that on said real estate above described there has been no tobacco business carried on except by the said R. E. Hodge.

3 2nd. That said plaintiff R. E. Hodge has since May 1, 1900, offered for sale and sold cigarettes on said real estate above described; that all cigarettes thus sold by him were ordered by him from the American Tobacco Company and the Monopol Tobacco Works, corporations organized under the laws of the State of New Jersey, with no place of business, so far as these plaintiffs are informed and believe, in the State of Iowa; that in a few days after the sending of said order by said R. E. Hodge to said American Tobacco Company and Monopol Tobacco Works (which order was for so many packages of Sweet Caporal, Monopol, Straight Cut and Abdallah cigarettes) the said R. E. Hodge received in his place of business on the said real estate, as above described, the number of packages ordered by him; that the delivery was made to him by an agent of the United States Express Company, a common carrier engaged in transportation of commodities into, within and through the State of Iowa; that these various packages were pasteboard boxes, each containing ten cigarettes, each package having on it the name of the brand, Sweet Caporal, Monopol, Straight Cut or Abdallah, as the case may be, the name, State, internal revenue district and number of the factory where made, and a "Caution notice," as provided by the internal revenue laws of the United States, warning all persons against using said package again; that in addition each package had a revenue stamp so pasted across its end that the revenue stamp would have to be removed before the contents of its package could be extracted, which revenue stamp purported to have been pasted on at the factory; that these various packages were delivered by said Amer-

4 ican Tobacco Company and Monopol Tobacco Works to the said United States Express Company in the city of St. Louis, in the State of Missouri, without box, bale, bag, wrapping or any covering or enclosure or anything in any way attaching said package-, or any of them together, with directions to deliver them to said R. E. Hodge at Muscatine, Muscatine county, Iowa; that the said United States Express Company did deliver said packages to said R. E. Hodge without box, bale, bag, wrapping or any covering or enclosure, or anything in any way connecting said packages, or any of them together; that upon receipt of said packages as aforesaid, and on said real estate above described, said R. E. Hodge put said packages on sale in the exact form in which they were received, and being the original packages received by him from the common carrier as aforesaid, and shipped to him as aforesaid by the American Tobacco Company and Monopol Tobacco Works, residents of New Jersey, as aforesaid, from without the State of Iowa, as hereinbefore alleged, and said R. E. Hodge has sold several of said packages; that as said hereinbefore, said R. E. Hodge has not sold, given away, or bartered, nor offered, nor held himself out as offering to sell, give away, or barter, since the first day of May, 1900, any cigarettes except such as were shipped to and received by him as above set out, nor has he sold, given away, nor bartered,

nor offered to sell, give away, or barter, any cigarette papers or wrappers at all, or permitted the same to be done by others; that said R. E. Hodge does not propose to do any sort of business in tobacco or cigarette papers but that in which he is now engaged, to-wit. the business of selling smoking and plug tobacco and cigars, and of selling cigarettes in the original packages in which imported by said R. E. Hodge from another State; that
5 said real estate has not nor will it be used for the sale of tobacco in any other manner or for the sale of cigarette papers.

3rd. That the legislature of the State of Iowa, at its 1897 session, passed a law which is still in full force and effect in the State of Iowa, being section 5007 of the Code of 1897, in words and figures as follows:

'There shall be assessed a tax of $300.00 per annum against every person, partnership or corporation, and upon the real property, and the owner thereof, within or whereon any cigarettes, cigarette paper or cigarette wrappers, or any paper made or prepared for use in making cigarettes, or for the purpose of being filled with tobacco for smoking, are sold or given away, or kept with intent to be sold, bartered or given away, under any pretext whatever. Such tax shall be in addition to all other taxes and penalties, shall be assessed, collected and distributed in the same manner as the mulct liquor tax, and shall be a perpetual lien upon all property, both personal and real, used in connection with the business, and the payment of such tax shall not be a bar to prosecution under any law prohibiting the manufacturing of cigarettes or cigarette paper, or selling, bartering or giving away same. But the provisions of this section shall not apply to the sale by jobbers and wholesalers in doing an interstate business with customers outside the State.'

That, as will be seen by reference to the mulct liquor tax, whose manner of assessment, collection and distribution, it is expressly provided, shall be adopted in the assessment, collection and distribution of taxes under the cigarette mulct tax law, it becomes
6 the duty of the assessor in the district in which cigarettes are sold, in the month of March, June, September and December of each year, to make an assessment of $75.00 against the person selling and the property in which the said cigarettes are sold, and that said tax shall become due and payable the first of the following month, and that upon a month's default a penalty of 20 per cent. is added, together with an additional penalty of one per cent. for each additional month of default; further, that the county auditor, to whom the assessment is in the first place returned, shall on the last day of December, March, June and September, certify to the county treasurer the list of those delinquent in the payment of said tax, with a description of the properties occupied by them, and said taxes shall thereupon become a lien upon said property; further provision is made for the collection of said tax as all other delinquent taxes are collectible; that is, by distress and sale of the property by the

county treasurer, and by sale of the real estate as provided for in the general statutes regulating the collection of taxes.

4th. That under the laws above set out the defendant assessor is proceeding to make his assessments in said Muscatine district, being urged thereto by the penalty provided in the said act, and also by advice from the county attorney of Muscatine county; that it is the declared purpose of all the defendants to enforce said mulct tax law against every person selling cigarettes and every piece of real estate upon which cigarettes are sold, by making the assessment provided in said law, putting the tax assessed in process of collection, adding penalties for delinquency, and by distress and sale of person-
7 alty and statutory sale of realty to enforce the payment thereof; that said plaintiffs under the terms of the law being liable to the tax, the plaintiff R. E. Hodge for selling cigarettes, and the plaintiff Mrs. J. Tabor as being the owner of real estate whereon cigarettes are sold, it is the declared purpose and intent of said defendants, and all of them as the tax assessing, supervising and collecting officers of Muscatine county, Iowa, to assess and compel the payment of said mulct tax from plaintiffs under the provisions of said mulct tax law. And defendants have assessed mulct taxes against said real estate for the months of May to December, 1900, inclusive, amounting to two hundred forty dollars, and are now proceeding to advertise said real estate for sale at the annual tax sale of Muscatine county to satisfy said mulct tax.

5th. That plaintiffs are advised and believe the said mulct tax law and all its provisions, in so far as they are sought to be enforced against plaintiff because of the sale by plaintiff R. E. Hodge of cigarettes as herein set out, is an attempted regulation of interstate commerce, and is therefore void as in contravention of that clause of the Constitution of the United States which gives to Congress the power to regulate commerce with foreign nations, Indian tribes and between the States. That as plaintiffs are further advised the said mulct tax laws being thus unconstitutional as applied to the business of the said R. E. Hodge carried on on the real estate of the said Mrs. J. Tabor as aforesaid, any tax assessed, levied and attempted to be collected from either of said plaintiffs on account of said business would be illegal and void, and plaintiffs have the right, therefore, to come into a court of equity without application to the board of supervisors for a remission and
8 pray for injunctive relief against any steps being taken to the annoyance and damage to plaintiffs in their business by the attempted and illegal assessment and collection of said tax; that without injunctive relief from the court, plaintiffs will be subject to great and irreparable injury in the attempted assessment and collection of said illegal tax, the attaching a lien to the real estate of said Mrs. J. Tabor and the sale of said real estate as well as the distraint of the personal property of both plaintiffs, and the injury to their legally conducted and constitutionally protected business as aforesaid.

Wherefore, plaintiffs pray that by injunction from this honorable court, the defendants and all of them be perpetually enjoined from assessing, levying or collecting any tax in accordance with the provisions of the mulct tax law hereinbefore set out against either of the plaintiffs, or against the property described herein, and be enjoined from taking any step looking to said assessment, levy or collection, or tax sale, and that a temporary injunction issue restraining such acts until this cause shall be finally heard, and that plaintiffs have such other and further relief as may be deemed equitable in the permises."

(Duly verified.)

The petition was presented to the court and temporary injunction issued.

Thereupon appellees filed the following

9 *Demurrer to Petition.*

"The defendants by their counsel demur to the petition of the plaintiffs for reason- as follows:

1. The facts stated in the petition do not entitle the plaintiffs to the relief demanded, nor to any relief. And without waiving any matter or thing that may be urged under the general demurrer so as above stated, the defendants specifically show hereunder, as follows:

(*a.*) It appears from the petition that R. E. Hodge, a citizen and resident of the State of Iowa, is engaged in selling and keeping with intent to sell within said State, cigarettes, in violation of the provisions of sections 5006 and 5007 of the Code; and it does not appear that said sales and proposed and intended sales by him are with customers outside of the State, nor do such sales constitute interstate commercial transactions.

(*b.*) The petition confesses purely domestic sales of cigarettes by one citizen of the State to other citizens of the State, his customers, the same as any other of his stock in trade. With these and such transactions, the interstate commercial laws have nothing to do, nor does Congress have constitutional authority nor assume to regulate them.

(*c.*) The importation of cigarettes into Iowa by the corporation tobacco companies and their delivery to R. E. Hodge in this State as a part of his store stock, ended the matter as an interstate commercial transaction; the goods in question thereupon became
10 a part of plaintiff's stock for his domestic trade, and his subsequent sales and keeping for sale rendered him and the property occupied by him, liable to the mulct tax enjoined herein.

(*d.*) It is only a sale and shipment by a citizen of one State to a citizen of another that is in the purview of the interstate commerce laws, and the constitutional provisions relating to them.

(e.) The packages in which, as it appears from the petition, the cigarettes were received by the plaintiff, were not original packages in the sense and meaning of the law, but were a mere subterfuge to enable the said plaintiff, R. E. Hodge, to retail, in violation of the police laws of Iowa, a commodity decided by the legislature and shown by experience to be detrimental to health and good morals.

2. There is no equity in the bill, nor is it sufficiently alleged that there is. It does not appear but that the plaintiffs have a complete and adequate remedy at law; and the only object of the bill is to defeat the State of a tax authorized by the legislature, upon domestic sales of a prohibited article of domestic commerce."

Thereupon appellants filed the following

* * * * * * *

11 Thereafter on the — day of July, 1901, by leave of court appellants filed the following:

12 *Second Amendment to Petition.*

"Division one."

"Come now the petitioners and for further amendment to their petition show to the court that said section 5007 of the Code in so far as it provides that it shall not apply to the sales of jobbers and wholesalers in doing an interstate business with customers outside the State is in violation of the fourteenth amendment of the Constitution of the United States in that it denies to your petitioners equal protection of the law, and your petitioners are persons within the jurisdiction of the State of Iowa. And in said provision said section 5007 is in violation of the 6th section of article 1 of the constitution of Iowa which provides that all laws of general nature shall have a uniform operation. That said law is therefore invalid and said pretended assessment null and void.

Division two.

Par. 1. And your petitioner, Mrs. J. Tabor, states further that she had no knowledge whatever that the real estate described in the petition was being used for the sale of cigarettes or cigarette paper until after said assessment was levied and never consented to the same; that petitioner resides in Illinois and that the said real estate was in charge of one J. H. Monroe, as agent who had full authority to look after, control and rent the same and had no authority to rent the same for any unlawful business and did in fact rent the same to R. E. Hodge, the co-plaintiff herein by written lease providing in express terms that the premises should not be used for any

13 unlawful purposes whatever, and neither this petitioner nor said agent, J. H. Monroe, had any knowledge or notice of

any kind that said premises were being used for the sale of cigarettes or cigarette paper. And your petitioner further states that she forthwith put a stop to the sale of cigarettes as soon as the same was brought to her attention. And since that time no sales have to her knowledge been made upon said premises either in the original package or in any other form.

Par. 2. And said petitioner further states that section 5007 in so far as it authorizes the levy of a tax against her property by reason of the unlawful sale of cigarettes thereon by other persons, without her knowledge and consent is wholly null and void and in contravention of the Constitution of the United States and the constitution of the State of Iowa, in that it authorizes the taking of her property without due process of law, in that said section 5007 does not provide for any notice to this petitioner and authorizes an assessment against her property even though she be absolutely innocent of the offense of dealing in cigarettes or cigarette paper. Wherefore your petitioners pray as heretofore and Mrs. J. Tabor particularly prays that said tax be decreed null and void so far as the same is a lien upon her real estate, and that the same may be cancelled and annulled and that she have judgment for her costs."

(Duly verified.)

Thereafter appellants by leave of court filed the following:

* * * * * * *

14 Whereupon appellants filed the following:

Demurrer to the Amendments to Petition.

"The defendants, by their counsel, demur to the amendments of plaintiffs' petition and to each of them, for reason- as follows:

1. The facts stated in their amendments do not entitle plaintiffs to relief demanded, nor to any relief. And without waiving any matter or thing that may be urged under the general demurrer so as above stated, the defendants specifically show hereunder, as follows:

(*a.*) It appears that sections 5006 and 5007 were enacted as part of the general codification of the laws of Iowa, as effected by the extra session of the Twenty-sixth General Assembly. Considering the sections together, and as they were enacted, it is plainly evident the legislature was treating the sale of cigarettes as a crime (see section 5006). Therefore the title of the act is a proper one.

15 (*b.*) Section 5007 only provides an additional penalty for the violation of section 5006.

(*c.*) The so-called tax provided for in section 5007 is not a tax for revenue; nor is the section enacted as a part of the general revenue laws of the State; and the section 7, article 7 of the constitution quoted, in no way applies to said section.

(*d.*) It is plain that the law (section 5007) does distinctly state the tax. It shall be $300 and its object is apparent from the law itself; and it does not 'refer to any other law to fix such tax or object.' The reference to another law is merely as to how said tax shall be 'assessed, collected and distributed.'

(*e.*) If properly called a tax, it is an occupation charge and not a property tax, and the laws relating to general taxes have no application.

2. There is no equity in the bill or the amendments thereto, nor is it sufficiently alleged there is. It does not appear but that the plaintiffs have a complete and adequate remedy at law; and the only object of the bill is to defeat the State of a tax or charge authorized by the legislature and under its police laws, upon the domestic sales of a prohibited article of domestic commerce."

And said demurrers were duly submitted and sustained, and the following

16 *Judgment Entry*

made of record.

"In this cause the demurrer of defendants to plaintiffs' petition and amendments thereto having been sustained by the court, to which ruling plaintiffs excepted at the time, and now plaintiffs electing to stand on their petition and amendments thereto and refusing to plead or proceed further with the trial of this cause;

"It is therefore ordered and adjudged that the defendants have and recover of and from the plaintiffs their costs in this suit taxed at $— and that execution issue therefor. To which judgment and ruling of court plaintiffs except."

And on the — day of February, 1901, the appellants perfected an appeal to the supreme court of the State of Iowa by serving notices of appeal upon the appellees and upon the clerk of the district court of Muscatine county and by securing the clerk for his transcript fees.

The foregoing abstract is full, true and correct, and contains all the pleadings in said action, all the exceptions, all the rulings and everything which is of record in said cause and all things referred to herein are of record in said court and cause.

DUNSHEE & DORN,
Attorneys for Appellants.
J. PARKER, *Of Counsel.*

We hereby certify that the cost of printing this abstract is $15.30.

DUNSHEE & DORN,
Attorneys for Appellants.

17 & 18 *Bond.*

Know all men by these presents: That we R. E. Hodge and Mrs. J. Tabor, as principals, and J. W. Howell, as sureties, are held and firmly bound unto Muscatine County in the full and just sum of two hundred and fifty dollars, to be paid to the said Muscatine County, its attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, our executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 10th day of November, in the year of our Lord one thousand nine hundred and three.

Whereas lately at a supreme court of the State of Iowa, in a suit pending in said court between R. E. Hodge and Mrs. J. Tabor, appellants, and Muscatine County, *et al.*, appellees, a judgment was rendered against the said R. E. Hodge and Mrs. J. Tabor, appellants, establishing and confirming certain so called cigarette mulct taxes against said appellants together with the costs of the cause, and the said R. E. Hodge and Mrs. J. Tabor having obtained a writ of error and filed a copy thereof in the office of the clerk of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said County of Muscatine citing and admonishing it to be and appear at a Supreme Court of the United States at Washington within thirty days from the date thereof.

Now the condition of the above obligation is such that if the said R. E. Hodge and Mrs. J. Tabor shall prosecute their writ of
19 error to effect and answer all damages and costs if they fail to make their plea good then the above obligation to be void; else to remain in full force and virtue.

R. E. HODGE,
MRS. J. TABOR,
By DUNSHEE & DORN, *Attorneys.*
J. W. HOWELL.

Approved by
CHARLES A. BISHOP,
Chief Justice of the Supreme Court of Iowa.

20 STATE OF IOWA, } *ss:*
Polk County, }

I, J. W. Howell, on oath depose and say that I am the surety above named; that I am worth more than $500.00 over and above my debts and exemptions, and have real property in the State of Iowa worth more than $500.00 outside of my homestead.

J. W. HOWELL.

Subscribed and sworn to before me and in my presence by the said J. W. Howell this 10 day of November, 1903.

[Notarial Seal, F. S. Dunshee, Iowa.]

F. S. DUNSHEE,
Notary Public.

21 [Endorsed:] 7 No. 22367. Law Equity Probate Supreme court of Iowa, —— county Hodge *vs.* Muscatine Co. Bond. Copy fee, $—. Filed Nov, 14 1903 Jno. C. Crockett, clerk supreme court. Dunshee & Dorn attorneys Des Moines, Iowa.

22 In the Supreme Court of Iowa.

R. E. HODGE and MRS. J. TABOR, Appellants,
vs.
MUSCATINE COUNTY ET AL., Appellees.
} Appeal from Muscatine District Court.

Hon. W. F. Brannan, judge.

Decree.

This case was duly submitted to this court at the May term thereof and taken under advisement and on the 22nd day of October, 1903, being one of the days of the October term of said court, a decision was handed down confirming the decree of the district court of Muscatine county, and appellants having waived time for filing motion for re-hearing, and having elected to stand on said decision, it is therefore ordered, adjudged and decreed, that the action of the said district court of Muscatine county be and is hereby affirmed; that the assessments complained of be and are hereby established and confirmed, and that judgment be rendered against appellants for costs; to all of which appellants except.

CHARLES A. BISHOP,
Chief Justice.

23 [Endorsed:] 7 No. 22367 Law Equity Probate Supreme court of Iowa —— county R. E. Hodge *vs.* Muscatine Co. *et al.* Decree Entered R. 24, 511 Copy fee $— Filed Nov. 14 1903 Jno. C. Crockett clerk supreme court. Dunshee & Dorn attorneys Des Moines, Iowa

24 UNITED STATES OF AMERICA, ss:

To the County of Muscatine, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the

clerk's office of the supreme court of Iowa, wherein R. E. Hodge and Mrs. J. Tabor are appellants and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellants, as in the writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles A. Bishop, chief justice of the supreme court of Iowa, this 13 day of November, in the year of our Lord, one thousand nine hundred and three.

CHARLES A. BISHOP,
Chief Justice of the Supreme Court of Iowa.

I acknowledge service of notice of the within, and copy of the same has been left with me this 14" day of November, 1903.

ED. P. INGHAM,
Attorney for Muscatine County.

25 [Endorsed:] No.— Law Equity Probate District court of Iowa —— county —— —— *vs.* —— ——. Copy fee $— Dunshee & Dorn attorneys Des Moines, Iowa.

26 In the Supreme Court of Iowa.

Filed Oct. 22nd, 1903.

R. E. HODGE and MRS. J. TABOR, Appellants,
vs.
MUSCATINE COUNTY ET AL., Appellees.

Appeal from Muscatine County district court.

Hon. W. F. Brannan, judge.

Suit in equity to enjoin defendants from assessing, levying, or collecting a cigarette mulct tax upon the property of plaintiff Tabor, which was used by plaintiff Hodge for the purpose of retailing tobacco and cigars, on the ground that the provisions of the "mulct law" authorizing such tax is unconstitutional and void as applied to the owner of property which has been leased to another.

The trial court dismissed plaintiffs' petition and they appeal.

Dunshee & Dorn, (J. Parker, of counsel) for appellants.
No appearance for the appellees.

DEEMER, *J.:*

As the case involves the constitutionality of certain statutes it seems necessary although they are familiar to the profession to set some of them out *in extenso.* Section 5006 of the Code forbids in

general terms the manufacture, sale, exchange, or disposition of cigarettes, or cigarette paper.

27 Sec. 5007 reads as follows:

"Tax on sale.—There shall be assessed a tax of three hundred dollars per annum against every person, partnership or corporation, and upon the real property, and the owner thereof, within or whereon any cigarettes, cigarettes wrapper, or any paper made or prepared for the use in making cigarettes, or for the purpose of being filled with tobacco for smoking, are sold or given away, or kept with the intent to be sold, bartered or given away under any pretext whatever. Such tax shall be in addition to all other taxes and penalties, shall be assessed collected and distributed in the same manner as the mulct liquor tax, and shall be a perpetual lien upon all property, both personal and real, used in connection with the business; and the payment of such tax shall not be a bar to prosecution under any law prohibiting the manufacturing of cigarettes, or cigarettes paper or selling, bartering or giving away the same. But the provisions of this section shall not apply to the sales by jobbers and wholesalers in doing an interstate business with customers outside of the State."

The sections referred to in section 5007, relating to the "assessment collection and distribution" of the taxes provided for therein are in substance (before amendment by the Twenty Ninth General Assembly) as follows:

SECTION 2433. In the months of December, March June and September of each year and before the twentieth day of each of said months the assessor shall return to the auditor a list of persons liable to the tax and a description of the real property whereon the business has been carried on.

SEC. 2436. On the first day of January, April, July & October of each year there shall be due and payable from each person so returned to the county auditor a quarterly installment of the mulct tax herein provided for, which shall be a lien upon the real property wherein such business is returned as being carried on, whether the person carrying on such a business or maintaining such place

28 is correctly described or not. If such installment is not paid within one month after it becomes due and payable, a penalty of 20 per cent., attaches together with 1 per cent. per month thereafter until it is paid. The person so assessed is liable for at least one quarterly installment whether he quits the business or not.

SEC. 2437. On the last day of December March, June, and September of each year the county auditor shall certify to the county treasurer a complete list of the names returned to him by the assessor, with a description of the real estate and the names of the occupant, and the owner or agent of such property.

SEC. 2438. The county treasurer shall thereupon enter upon *teh* book known as the mulct tax book a quarterly installment of the mulct tax as due and payable by the person carrying on such business as

a lien and charge upon and against the real property wherein or whereon such business is carried upon.

SEC. 2439. After the expiration of one month from the date of when such tax becomes due if not paid it shall be delinquent and collectable by the treasurer in the same method as that in which other delinquent taxes are collectable and all the provisions as to collection of other delinquent taxes shall apply. Tax sales for said delinquent taxes shall also be made on the first Monday of June in each year.

SECTION 2440. At any time after a quarterly installment of such taxes becomes delinquent, the treasurer may collect the same by seizing and selling any personal property used in connection with the business or in maintaining the place."

These are all the provisions of the mulct liquor law with reference to the assessment and collection of the liquor mulct tax. The following provisions of the liquor law with reference to the remission of taxes assessed erroneously are claimed to be applicable to the cigarette business and in view of such claim we give an abstract of such provisions.

SEC. 2441. "At the meeting of the board of supervisors next following, the listing as aforesaid, application may be made to the board to remit the tax by petition duly verified and filed with the county auditor at least eight days before the time set for the consideration of the case, and notice for the same length of time
29 must be served on the county attorney in writing. The averments of the petition shall be deemed denied and witnesses may be examined oath being administered by the chairman of the board with the same effect as to penalties for testifying falsely as if administered in court.

SEC. 2442. The owner of the property may be heard in support of his application and evidence of the general reputation of the place shall be admissable. If it be found by a majority vote of the board that the tax is proper it shall stand; otherwise it shall be remitted. Eeither the petitioner or the county attorney may appeal to the district court and if the petitioner appeals he shall be required to give bond for costs accrued and to accrue, whereupon the auditor shall file a transdript in the office of the clerk.

SEC. 2444. On appeal the trial shall be conducted as a- equitable cause."

Appellants contend that section 5007 is void because it deprives or may deprive citizens of their property without due process of law in that:—(1) That law contains no provision for notice to either dealer or real estate owner. (2) The charge imposed by section 5007 is in the nature of a criminal penalty and the measures provided for its enforcement and collection are not adapted to the ends sought. (3) The attempt to enforce a criminal penalty through the taxing machinery of the State is revolutionary and contrary to the established principles of justice. (4) The principles embodied in the law in question are arbitrary unusual and unknown to "the

law of the land" as that term is used and intended in all constitutions. The petition also challenged the act because it was an attempt to regulate interstate commerce and therefore void. This point is not insisted upon for the reason we suppose that under a substantially similar state of facts it was held in Cook *vs.* Marshall County, 93 N. W. R., 372, that there was no merit in the contention. That case also holds the act in question was properly entitled and that it is uniform in its operation.

The objections now made to the enactment as stated by counsel in the quotation made from their brief, nearly all revolve around the central thought that it amounts to taking of plaintiffs' property without due process of law and in contrary to the law of the land.

30 Incidental to this is the claim th-t sections 2441–2442 and 2444 do not apply to the case. This is bottomed on the notion that sec. 5007 does not refer to those sections either in terms or by necessary implication. The reference to the mulct liquor tax law is as follows: Such tax * * * shall be assessed, collected and distributed in the same manner as the mulct liquor tax." Sections 2441 *et seq.* are found in this mulct liquor tax law and it seems to us they refer to the assessment and collection of that tax. They are a part of the proceedings with reference to the assessment and collection of the mulct tax and are as much a part of the proceedings as if written out at length in section 5007 before quoted. A section which relates to the remission or revocation of the tax when embodied in the act authorizing its assessment and evidently forming one of the inducements to the passage of the act is as much a part of the law relating to the assessment and collection of the tax as that part expressly authorizing the levy and collection thereof.

And in determining the constitutionality of a statute imposing a tax, it would be unjust and unreasonable to divorce it from other provisions of the same law which gave to the person against whom the tax is to be assessed and from whom the tax is to be collected, a remedy for avoiding that tax.

The whole act relating to this subject and germane to the purposes and objects thereof should be considered in arriving at its constitutionality. These sections of the mulct liquor tax law relating to what may be called the remission of the tax really relate to its enforcement or assessment and should be considered in determining the constitutionality of sec. 5007 with this conclusion in mind we now go to the points made by counsel against the validity of the law.

31 It differs from the liquor mulct tax in that the payment thereof does constitute a bar to prosecutions under section 5006 which absolutely prohibits the sale of cigarettes.

In this it is peculiar and this peculiarity constitutes the basis of the attack made upon it.

The tax imposed by the mulct liquor law has been held to be a

charge or license exacted for the privilege of carrying on the business of vending liquors.

Smith *vs.* Scow, 66 N. W., 893.

And *In re* Smith 104 Ia. 199, it is held that as the tax is assessed and levied by virtue of a general law upon all premises and persons which came within the provisions of the act, the persons liable to the same must appear and pay the same without notice. In the opinion it is said "No notice to the lot owner of the assessment and levy was necessary. * * * There was no more necessity for notice to the property owner than in cases of taxes generally."

In Ferry *vs.* Deneen, 82 N. W. R. 424, it is said: "It is apparent taking all the provisions of this act together that the amount imposed while called a tax is at the same time a penalty. We do not think all the rules governing ordinary taxes should control here. * * * The levy is made by the law * * * and as used in the act means scarcely anything more than a formal approval."

As to the vender of either cigarettes or liquors no notice of the assessment or levy of the tax is necessary. The tax is specific and operates alike upon all who engage in the business. The amount is fixed and there is nothing left to inquire into and determine.

Ferry *vs.* Campbell, 110 Ia. 294.

Gatch *vs.* Des Moines, 63 Ia. 718.

But it is contended that the owner of property who is not directly engaged in the unlawful business is entitled to notice and opportunity to be heard before a tax may be legally levied against his property and that as the law does not require such notice it is invalid.

32 In order to solve this question it is necessary to investigate a little more closely into the nature of the tax imposed by section 5007. It is clearly not a license for it does not grant permission to do an act which without such permission would be invalid.

State *vs.* Hipp, 38 Ohio St. 206.

Chilvers *vs.* People, 11 Mich. 43.

It is manifestly a tax upon the traffic which the legislature saw fit to impose not for the purpose of giving countenance to the business but as a deterrent against engaging therein. It confers no right but imposes an impediment to the transaction of the business. It is clearly a tax on that business levied to meet the burdens imposed upon the general public by what is thought to be the result upon the human race and particularly upon children of the use of cigarettes.

Indemnity and protection to the public against evils resulting from the nature and character of the business is the central thought. It also partakes of the nature of a police regulation but it is not to be wholly so regarded.

Indeed we think it may be fairly said to be a tax upon the business. That a tax is imposed for the double purpose of regulation and revenue is no reason for declaiming it, invalid.

2 Dusty on Taxation, 1384.

Being a tax it was competent for the legislature to prescribe the proceedings and processes for its collection.

From the beginning the people of this country have collected taxes through administrative officers, and there has been no suggestion that ordinary judicial processes were necessary to meet the constitutional guaranty of "due process of law."

Cooley on Taxation, 49.

Power of taxation is inherent in sovereignty and this power it has been said "in its nature acknowledges no boundary." As said by the great chief justice in McCulloch *vs.* Maryland 4 Wheat. 428. "The only security against the abuse of the power is found in the structure of the Government itself.

In imposing a tax the legislature acts upon its constituents.
33 This is in general a sufficient security against erroneous and oppressive taxation."

The term "due process of law" is often mis-apprehended or misapplied. Indeed it seems impossible to give a definition which is at once perspicuous and satisfactory.

When applied to taxation regard must be had of the nature of the power. As said in Hagar *vs.* Reclamation Dist. 4. S. C. R. 663 "The power of taxation possessed by the State may be exercised upon any subject within its jurisdiction and to any extent not prohibited by the Constitution of the United States. It may touch property in every shape * * * and the amount of the taxation may be determined by the value of the property, or its use or productiveness. It may touch business in the almost infinite forms in which it is conducted * * * unless restrained by provisions of the Federal Constitution. The power of the State as to the mode form and extent of taxation is unlimited, where the subjects to which it applies are within its jurisdiction."

Following this principle it has been held that a statute of the State of Michigan, authorizing the treasurer to levy by distress and sell any goods or chattels found in the possession of the tax debtor, and that no claim of property made thereto by any other person should be available to prevent the sale was valid.

Sears *vs.* Cottrell, 5 Mich. 251, see also
Sheldon *vs.* Van Buskirk, 2 N. Y. 473.

We need not go to this extent in the case now before us although we have recognized the principle as applied to inn-keepers, liens in Brown Bros. *vs.* Hunt, 103 Iowa 586.

On the authority of the Supreme Court of the United States we do hold that as to the person actually engaged in the business it is not

necessary that he be present, or that he have an opportunity to be present when the assessment is made.

McMillan *vs.* Anderson, 95 U. S. 37.
State R. R. Tax cases 92 U. S. 575.

As to the owner of the property, if any notice or opportunity to be heard be necessary it is sufficient if he be given an opportunity for contesting the charge in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case.

34 Davidson *vs.* New Orleans, 96 U. S. 97.

The Supreme Court of the United States has uniformly adhered to the doctrine that a tax law which provides for a board of revision authorized to hear complaints respecting the justice of an assessment, and prescribes the time during which and the place where such complaints may be made meets all constitutional requirements.

Palmer *vs.* McMahon 10 S. C. R. 327 and cases cited.
Glidden *vs.* Harrington, 23 S. C. R. 574, [61 N. E. 54],* which sustains a similar provision to the act in question.
See also Towns *vs.* Klamanth Co. 53 Pac. Rep. 604.
Paulsen *vs.* Portland, 149 U. S. 30.

We have heretofore given our adherence to this doctrine. In Trustees of Griswold College *vs* City 65 Iowa 634, we said " It seems to be agreed therefore that property taken for the non-payment of taxes is not taken without due process of law, if the tax payer is afforded an opportunity to be heard in relation to the tax, though it be only before the officers clothed with power to assess.

See also Yeomans *vs.* Riddle, 84 Iowa 147.

Indeed the rule seems to be elementary.

Board *vs.* R. R. Co. 48 N. J. L. 146.
Lent *vs.* Tillson, 72 Cal. 404.
Spencer *vs.* Merchant, 100 N. Y. 585.

An act very similar to the one in question was sustained by the supreme court of Ohio in Adler *vs.* Whitbeck 9 N. E. 672.

We are constrained to hold that secs. 2411 *et seq.*, save the act from the claim of unconstitutionality because of want of notice and opportunity to be heard. The regular meetings of the board are fixed by law, and of these all persons must take notice.

What we have said and the authorities already cited answer most of the other contentions made by appellants. There is no requirement of law that such taxes must be collected through judicial proceedings. They may be enforced through summary processes

[* Letters and figures enclosed in brackets in pencil in copy.]

such as distraint or tax sale. This is well established by the cases already cited. The two cases relied upon by appellant McBride *vs.* Adams, 12 So. Rep. 699, and Chauvin *vs.* Valiton, 3 L. R. A. 196 are not in point. The first involved a law imposing a fine or penalty for doing an illegal act, which was to be assessed and
35 collected as a tax. This was held invalid because not due process of law. In the second the legislature of Montana undertook to make a license a lien on property, and to provide for the collection thereof by summary process. This was held invalid because of want of notice or opportunity to be heard. In that case the owner of the property was not given an opportunity to contest the charge.

The unreasonableness of the act is not a matter for our consideration. There is nothing arbitrary in a statute which provides for the collection of a tax by summary process. Such proceedings are necessary to secure prompt payment. They existed long before the constitution was formed, and are in accord with the law of the land.

The trial court was right in sustaining the demurrer to the petition, and its judgment is affirmed.

Affirmed.

36 In the Supreme Court of Iowa.

R. E. HODGE and MRS. J. TABOR, Appellants,
vs.
MUSCATINE COUNTY and THE TAXING Officers of Muscatine Co., Appellees.
} Petition for Writ of Error.

To the Hon. Charles A. Bishop, chief justice of the supreme court of Iowa:

Now, come R. E. Hodge and Mrs. J. Tabor appellants in the above entitled cause by their attorneys and say that on the 22 day of October, 1903, the supreme court of Iowa, being the highest court in the State of Iowa in which a decision in the above entitled cause could be had, entered a final judgment herein in favor of the State of Iowa and against the appellants, in which judgment and the proceedings had prior thereunto in this cause certain errors were committed, to the prejudice of the plaintiff-in error, in that the validity of a certain statute of the State of Iowa, constituting section 5007 of the Code of 1897, having been drawn in question by the appellants, on the ground that the same is repugnant to the 14th amendment to the Constitution of the United States and to the 3rd sub-division of section 8 of article 1 of the Constitution of the United States, the decision of this court was in favor of the validity of the said statutes and against the rights set up under the said clause of the United States Constitution, as aforesaid, and these appellants were by said decision made liable to certain unjust penalties levied against their

property under and by virtue of the terms of said invalid
37 section 5007.

Wherefore the said appellants, R. E. Hodge and Mrs. J. Tabor, pray that a writ of error may issue in this behalf from the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the records, proceedings, opinion, and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States, and that the said judgment and decree may be re-examined and reversed.

DUNSHEE & DORN,
Attorneys for Appellants.
JUNIUS PARKER, *Of Counsel.*

38 [Endorsed:] 7 No. 22367 Law Equity Probate Supreme court of Iowa —— county R. E. Hodge *vs.* Muscatine Co. Petition for writ of error Copy fee $— Filed Nov. 14 1903 Jno. C. Crockett clerk supreme court. Dunshee & Dorn attorneys Des Moines, Iowa

39 In the Supreme Court of the United States.

R. E. DODGE and MRS. J. TABOR, Plaintiffs in Error, *vs.* MUSCATINE COUNTY and THE TAXING Officers of Muscatine County, Defendants in Error.	Writ of Error to the Supreme Court of Iowa. Assignment of Errors.

The plaintiffs in error, R. E. Hodge and Mrs. J. Tabor, come, by their attorneys, feeling themselves to be aggrieved by the findings and judgment of the supreme court of Iowa in the above-entitled cause and assign errors thereto, as follows:

I.

That the supreme court of Iowa erred in holding and adjudging that the statute passed by the General Assembly of the State of Iowa, and constituting section 5007 of the Code of Iowa, under which certain so-called cigarette mulct taxes were levied against the plaintiffs in error by the taxing officers of Muscatine county, and against certain real estate of the said Mrs. J. Tabor, in so far as the act- of plaintiffs in error for which said so called cigarette mulct taxes were levied are concerned, is not in conflict with section 8 of article I of the Constitution of the United States, and in adjudging that said so called cigarette mulct taxes levied under said section 5007 are valid and a lien upon plaintiff's real estate.

40 II.

That the supreme court of Iowa erred in holding and adjudging that the statute passed by the General Assembly of the State of Iowa,

and constituting section 5007 of the Code of Iowa, under which said so called cigarette mulct taxes were assessed by the taxing officers of Muscatine county against the plaintiffs in error and made a lien upon the real estate of plaintiff in error, Mrs. J. Tabor, is not in so far as the acts of the plaintiffs in error, for which said so called cigarette mulct taxes were levied are concerned, in conflict with section 10 of article 1 of the Constitution of the United States, and said supreme court erred in adjudging that the said so called cigarette mulct taxes are valid and are a valid lien upon the real estate of the said Mrs. J. Tabor.

III.

That the supreme court of Iowa erred in holding and adjudging that cigarette packages manufactured for retail trade, for the sale of which the said so-called cigarette mulct taxes were levied against plaintiffs in error, are not legitimate articles of interstate commerce and are, therefore, not under the protection of section 8 or section 10 of article 1 of the Constitution of the United States and that the regulation of commerce in said articles is, therefore, not within the power of Congress under said section of the Constitution of the United States, as aforesaid, but is under the power of the various States, and that therefore the so called cigarette mulct taxes were properly levied under the terms of section 5007 of the Code of Iowa, although plaintiff in error, R. E. Hodge, had imported said cigarettes from another State and sold them in the original package in which they were imported.

41

IV.

That the said supreme court of Iowa erred in holding that the package sold by plaintiff in error, R. E. Hodge, was not an original package in which imported and that therefore the sale by plaintiff in error was not an act of interstate commerce, subject under sections 8 and 10 of article 1 of the Constitution of the United States to only congressional regulation and not subject to the control of any of the States.

V.

That the validity of the aforesaid statute passed by the General Assembly of the United States in the year 1897 having been drawn in question by the plaintiffs in error so far as the same applies to the acts for which certain so called cigarette mulct taxes were levied against plaintiffs in error on the ground that said statute so applied constituted a regulation of interstate commerce, and is therefore in contravention of the Constitution of the United States, the supreme court of Iowa erred in that its decision was in favor of the validity of said statute as applied to the sales of the plaintiff in error, R. E. Hodge, for which said so called cigarette mulct taxes were levied and in holding and adjudging that said section was as so applied

not in conflict with the said section of the Constitution of the United States.

VI.

That the said supreme court of Iowa erred in holding and adjudging that the statute passed by the General Assembly of the State of Iowa and constituting section 5007 of the Code of Iowa, under which so called cigarette mulct taxes were levied by the taxing officers of Muscatine county, Iowa, against plaintiffs in error is not in so far as the acts of plaintiffs in error for which said so called cigarette mulct taxes were levied are concerned in conflict with section 1 of
42 the 14th amendment to the Constitution of the United States, and in adjudging that said cigarette mulct taxes are valid and a valid lien against the real estate of the plaintiff in error, Mrs. R. E. Hodge.

VII.

That the said supreme court of Iowa erred in holding that the said section 5007 of the Code of Iowa as applied to the acts of plaintiffs in error for which said cigarette mulct taxes were levied does not deny to plaintiffs in error equal protection of the law, plaintiffs in error being persons within the jurisdiction of the State of Iowa, and in holding that said section 5007 in that the same does not deny to plaintiffs in error equal protection of the law is not in violation of section 1 of the 14th amendment to the Constitution of the United States.

VIII.

That the said supreme court of Iowa erred in holding that said section 5007 of the Code of Iowa under which said so called cigarette mulct taxes were levied does not authorize the taking of property without due process of law, and in holding that said so called cigarette mulct taxes levied by the taxing authorities of Muscatine county are not a taking of the property of the said R. E. Hodge and Mrs. J. Tabor without due process of law, and that therefore the said section 5007 is not in contravention of section 1 of the 14th amendment to the Constitution of the United States.

IX.

That the said supreme court of Iowa erred in holding that the said section 5007 of the Code of Iowa and the sections of the code therein referred to, to-wit: sections 2433, 2436, 2437, 2438, 2439, 2440, 2441, 2442 and 2444 in so far as said sections authorized the levy of the so called cigarette mulct taxes against the plaintiffs in error and against the real property of the plaintiff in error,
43 Mrs. J. Tabor, through the taxing officers of Muscatine county and without trial by jury and without notice to either

plaintiff in error and without any judicial proceeding are due process of law and are not in contravention of section 1 of the 14th amendment to the Constitution of the United States.

X.

That the said supreme court of Iowa erred in holding that the so called cigeratte mulct taxes levied against plaintiffs in error under and by virtue of the provisions of the said section 5007 of the Code of Iowa are a tax and not a penalty, and that the same were properly levied and assessed by the taxing officers of Muscatine county under the power of taxation, and therefore that the same were not in violation of the provisions of section 1 of the 14th amendment to the Constitution of the United States.

XI.

That the said supreme court of Iowa erred in holding that the said so called cigarette mulct tax levied under the provisions of the said section 5007 of the Code of Iowa is a tax and not a criminal penalty, and in holding that said so called cigarette mulct tax not being a criminal penalty is enforcible by the taxing officers of Muscatine county and not by the judiciary of said county and in denying to these plaintiffs in error, who are citizens of the United States, a trial in accordance with the forms of procedure guaranteed them by the law of the land, and in holding that for said reasons the said section 5007, and other sections referred to therein, are not in contravention of section 1 of the 14th amendment to the Constitution of the United States.

44 XII.

And the validity of the aforesaid section 5007 of the Code of Iowa and the sections referred to therein passed by the General Assembly of the State of Iowa having been drawn in question by the plaintiffs in error so far as the same applied to the acts of plaintiffs for which so called cigarette mulct taxes were levied on the ground that the said statute so applied permits an encroachment of the legislative upon the judicial department of the Government, and denies to plaintiffs in error a trial by the judicial department of the State of Iowa in accordance with the established forms of the law of the land, the supreme court of Iowa erred in that its decision was in favor of the validity of the said section 5007 and the other sections referred to therein as applied to the sales by the plaintiffs in error, for which sales the said so called cigarette mulct taxes were levied, and in holding and adjudging that the same was as so applied not in conflict with the first section of the 14th amendment to the Constitution of the United States.

XIII.

That the validity of the aforesaid statute passed by the General Assembly of the State of Iowa as aforesaid having been drawn in question by the plaintiffs in error, as applied to the acts for which said so called cigarette mulct taxes were levied against plaintiffs in error and against the real estate of the said Mrs. J. Tabor on the ground that said statute so applied provides for a procedure which is unreasonable, arbitrary, unusual and unknown to the law of the land as that term was intended in the constitutions of this country and is therefore in contravention to the Constitution of the United States, the supreme court of Iowa erred in that its decision
45 was in favor of the validity of the said statute as applied to the sales of the plaintiff, R. E. Hodge, for which so called cigarette mulct taxes were levied and adjudging that the same was as so applied not in conflict with the said section of the Constitution of the United States.

XIV.

And the said R. E. Hodge and Mrs. J. Tabor pray that the errors so complained of may be corrected and that the judgment of the supreme court of Iowa may be reversed, annulled and altogether held for nothing; and that the said so called cigarette mulct taxes may be adjudged to be null and void and of no effect and that plaintiffs in error be restored to all things which they have lost by *action* of the said erroneous judgment aforesaid.

DUNSHEE & DORN,
JUNIUS PARKER,
Attorneys for Plaintiffs in Error.

46 [Endorsed:] No.— Law Equity Probate District court of Iowa —— county —— —— *vs.* —— —— Copy fee $— Dunshee & Dorn attorneys Des Moines, Iowa.

47 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of a plea which is in the said supreme court of Iowa, at the October term 1903 thereof, at Des Moines, Iowa, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between R. E. Hodge and Mrs. J. Tabor, appellants, and Muscatine County, *et al.*, appellees, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State,

on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said R. E. Hodge and Mrs. J. Tabor, appellants, as aforesaid, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice
48 done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 13th day of November, in the year of our Lord one thousand nine hundred and three.

[Seal U. S. Circuit Court, Southern District Iowa.]

EDWARD R. MASON,
Clerk of the Circuit Court of the United States
for the Southern District of Iowa.

STATE OF IOWA, *ss:*

Allowed by—

CHARLES A. BISHOP,
Chief Justice of the Supreme Court of Iowa.

Bond on appeal fixed at two hundred and fifty dollars.

CHARLES A. BISHOP,
Chief Justice of the Supreme Court of Iowa.

49 [Endorsed:] 7 No. 22367 Law Equity Probate Supreme court of Iowa —— county R. E. Hodge *vs.* Muscatine Co. Writ of error. Copy fee $—. Filed Nov. 14 1903 Jno. C. Crockett clerk supreme court. Dunshee & Dorn attorneys Des Moines, Iowa.

50 STATE OF IOWA, *ss:*

I, Jno. C. Crockett, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a true and correct transcript of the record, opinion, and final judgment in the case of R. E. Hodge and Mrs. J. Tabor, plaintiff- in error, *vs.* Muscatine County *et al.* defendant- in error, as full, true and complete as the same are of record and on file in my office.

I further certify that the writ of error, citation and supersedeas bond, with the order of approval to operate as a supersedeas endorsed thereon, are hereto attached in original form, and that true and correct copies thereof have been retained in my office, and this return is made in obedience to said writ of error.

In testimony whereof witness my signature and the seal of said court, at Des Moines, Iowa, this 24th day of November 1903.

[Seal of the Supreme Court of Iowa.]

JNO. C. CROCKETT,
Clerk of the Supreme Court of Iowa.

51 In the Supreme Court of the United States.

R. E. HODGE and MRS. J. TABOR, Plaintiffs in Error,
vs.
MUSCATINE COUNTY AND THE TAXING OFFICERS OF MUSCATINE County.

The appellants in compliance with sec. 9 of rule X of this court, designate the following as a portion of the record of this cause which they think necessary for the consideration of the errors assigned by them, to-wit:

The entire abstract of record filed by the plaintiffs in error in the supreme court of Iowa, with the exception of the first amendment to the petition found on page 11 of said abstract, and the third amendment to the petition found on page 14 of said abstract of record; the opinion of the Iowa supreme court, and the decree entered by the supreme court of Iowa.

Plaintiffs in error do not rely upon the questions raised in the said first and third amendments to their petition.

JUNIUS PARKER,
DUNSHEE & DORN,
Attorneys for Plaintiffs in Error.

I hereby accept due and legal service of the above and foregoing this 7″ day of December 1903

ED. P. INGHAM,
Att'y for Muscatine County et al.

52 [Endorsed:] File No. 19,144 Supreme Court U. S. October term, 1903. Term No. 493. R. E. Hodge *et al.* P. E. *vs.* Muscatine Co. *et al.* Designation by pl'ff- in error of parts of record to be printed & acceptance of service of same. Filed Dec. 12", 1903.

53 In the Supreme Court of Iowa.

R. E. HODGE, MRS. J. TABOR, Plaintiffs in Error, *vs.* MUSCATINE COUNTY. } Designation of Record by Defendant in Error.

Comes now Muscatine County and in compliance with the rules, asks that the following portion of the record in this cause be printed, to-wit: the opinion of the Iowa supreme court, and the decree entered by the supreme court of Iowa, and the entire abstract of record used in the Iowa supreme court, with the exception of the first and third amendments to the petition.

HENRY JAYNE,
Att'y for Muscatine County.

Admitted 1887

54 [Endorsed:] File No. 19,144. Supreme Court U. S. October term, 1903. Term No. 493. R. E. Hodge *et al.*, pl'ffs in error *vs.* Muscatine Co. *et al.* Designation by def'ts in error of parts of record necessary to be printed. Filed January 19", 1904.

Endorsed on cover: File No. 19,144. Iowa supreme court. Term No. 493. R. E. Hodge and Mrs. J. Tabor, plaintiffs in error, *vs.* Muscatine County *et al.* Filed November 27", 1903. File No. 19,144.